



March 27, 2001

Ms. Lois A. Wischkaemper
Galey & Wischkaemper
P.O. Box 1019
Lubbock, Texas 79408-1019

OR2001-1198

Dear Ms. Wischkaemper:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145338.

The Lubbock County Hospital District, d/b/a University Medical Center (the "hospital"), which you represent, received a request for the videotape of events that occurred in the University Medical Center Emergency Room on Wednesday, January 3, 2001, at approximately 10:32 p.m. until Thursday, January 4, 2001, at 12:09 a.m. You first state that you have no information responsive to the request for the period after 11:03 p.m. on Wednesday, January 3, 2001. You explain that the videotapes are changed at the beginning of each security shift and would have normally been changed at 11:00 p.m., but because the incident was in progress during the security staff shift change, the security staff was otherwise occupied and did not change the videotape. You have, however, submitted a videotape depicting the period from 10:32 p.m. to approximately 11:03 p.m. on Wednesday, January 3, 2001. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.119(a) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1)

release of the information would interfere with the detection, investigation, or prosecution of crime.” Although the hospital is clearly not a law enforcement agency, Open Records Decision Nos. 199 (1978), 36 (1974), this office has held that records which otherwise qualify for the section 552.108 exception do not necessarily lose that status while in the custody of an agency not directly involved in law enforcement. Open Records Decision No. 272 at 1-2 (1978).

Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested videotape relates to an ongoing investigation by the Lubbock Police Department. Based upon this representation, we conclude that the release of the videotape would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the videotape may be withheld, in its entirety, pursuant to section 552.108(a)(1) of the Government Code. Although section 552.108 authorizes you to withhold the requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov’t Code § 552.007. Because section 552.108(a)(1) is dispositive, we need not address your sections 552.101 and 552.119 arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

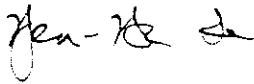
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 145338

Encl. Submitted documents

cc: Mr. Benji Snead
KCBD-TV Channel 11
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(w/o enclosures)